RECENT AMERICAN DECISIONS.

Supreme Court of Errors of Connecticut.

NEW HAVEN AND DERBY RAILROAD CO. v. CHAPMAN.[1]

The plaintiffs, a railroad company, were incorporated with a capital of $500,000, with power "to call the first meeting of the stockholders whenever $100,000 or more of the capital stock shall have been subscribed for, to choose directors and perfect the organization of said corporation," and "when so organized to proceed to commence the construction of the railroad."

The sum of $216,700 was subscribed, including the subscriptions of the defendants, and the first meeting of the stockholders was then held and directors chosen. Subsequently an amendment to the plaintiffs' charter was passed by the General Assembly, authorizing the city of New Haven to subscribe $200,000 to the capital stock, and to appoint two directors in the company, with one vote for every four shares of stock held by the city. Pursuant to the power so given, the city of New Haven subscribed $200,000 to the stock, and appointed two directors who assumed and continued to discharge the duties of the office.

No other subscriptions were made, and the directors thereupon proceeded to call in the capital stock, and to commence the construction of the railroad.

In an action to recover subscriptions to the stock, *Held*, 1. That the term "organize," as used in the charter, embraced merely the choice by the stockholders of the necessary officers for the transaction of the business of the company, and that the plaintiffs, when so organized, $100,000 having been subscribed to the stock, might legally begin the exercise of their corporate franchise. 2. That the amendment to the charter, and the action of the plaintiffs and the city under it, did not impair the rights of the defendants as stockholders, or relieve them from liability on their subscription.

ASSUMPSIT to recover for subscription to the capital stock of the plaintiffs. On the trial to the court on the general issue with notice, the court found the facts, and reserved the case for the advice of this court.

The plaintiffs were incorporated with a capital of $500,000, with power to call a meeting of the stockholders to choose directors and perfect the organization of the company whenever the sum of $100,000 should be subscribed to the capital stock. The sum of $216,700 was subscribed, when the first meeting of the stockholders was held, and directors chosen. Subsequently the city of New Haven, having received authority so to do, subscribed the sum of $200,000 more. No other subscriptions were ever made, leaving the sum of $83,300 unsubscribed for. The directors thereupon proceeded to call in the capital stock thus sub-

[1] This case is furnished by the courtesy of the reporter, John Hooker, Esq.

scribed, and to commence the construction of the proposed railway.

The defendant Chapman subscribed for two shares of said stock; and the defendant Barker for three shares. Each of the defendants paid two instalments of ten per cent. each, leaving the remaining eighty per cent. due and unpaid. These actions were brought to recover the balance with interest.

H. B. Harrison, for the plaintiff, cited *Starr* v. *Pease*, 8 Conn. 541; *Pratt* v. *Allen*, 13 Id. 119; *Northern R. R. Co.* v. *Miller*, 10 Barb. 260; *Buffalo & N. Y. City R. R. Co.* v. *Dudley*, 14 N. Y. 336; *In re Oliver Lee's Bank*, 21 Id. 20, 21; *Meadow Dam Co.* v. *Gray*, 30 Maine 549; *Agricultural Branch R. R. Co.* v. *Winchester*, 13 Allen 29; *Pacific R. R. Co.* v. *Renshaw*, 18 Mo. 210; *Midland Railway Co.* v. *Gordon*, 16 Mees. & W. 804; Angell & Ames on Corp., ch. 2, § 7; Gen. Stat., tit. 7, ch. 7, § 443, *et seq.*, ch. 6, § 240; *Schenectady & Saratoga Plank Road Co.* v. *Thatcher*, 11 N. Y. 102; *Burlington & Missouri River R. R. Co.* v. *White*, 5 Iowa 409; *Sparrow* v. *Evansville & Crawfordsville R. R. Co.*, 7 Ind. 369; *Barret* v. *Alton & Sangamon R. R. Co.*, 13 Ill. 504.

Wright and *Watrous*, for the defendants.

1. The plaintiffs cannot prevail against the defendants, because the whole capital of $500,000 required by the charter had not been subscribed when the instalments sought to be recovered were laid; nor has the same since been subscribed: Gen. Stat. 487, § 12; 170, § 393, *et seq.*; 141; Angell & Ames on Corp., §§ 110, 556; Redfield on Railways, ch. 4, §§ 1, 18; ch. 3, §§ 3, 65; *Anderson* v. *Newcastle & Richmond R. R. Co.*, 12 Ind. 376; *Matty* v. *Northwestern Virginia R. R. Co.*, 16 Md. 422; Redfield on Railways, ch. 4, sec. 1, § 18, (2,) (6); *Walker* v. *Devereaux*, 4 Paige 239; *Hartford & New Haven R. R. Co.* v. *Kennedy*, 12 Conn. 499; *Shurtz* v. *Schoolcraft & Three Rivers R. R. Co.*, 9 Mich. 272; *Salem Mill Dam Co.* v. *Ropes*, 6 Pick. 23; s. c., 9 Id. 187: *Stoneham Branch R. R. Co.* v. *Gould*, 2 Gray 277; *Troy & Greenfield R. R. Co.* v. *Newton*, 8 Id. 596, 602, 603; *New Hampshire Central R. R. Co.* v. *Johnson*, 10 N. H. 390, 407; *Cabot & West Springfield Bridge Co.* v. *Chapin*, 6 Cush. 52; *Lewey's Island R. R. Co.* v. *Bolton*, 48 Maine 455; *Oldtown & Lincoln R. R. Co.* v. *Veazie*, 39 Id. 571; *Penobscot R. R. Co.*

v. *White*, 41 Id. 512; *Peoples' Ferry Co.* v. *Balch*, 8 Gray 303, 311; *Atlantic Cotton Mills* v. *Abbott*, 9 Cush. 423, 426; Redfield on Railways, ch. 4, sec. 1, § 18, (2,) note 3; ch. 9, sec. 5, § 51, *et seq.*; ch. 7, sec. 1, § 30 (1); *Nutter* v. *Lexington & West Cambridge R. R. Co.*, 6 Gray 88; *Central Turnpike Co.* v. *Valentine*, 10 Pick. 142; *Lexington & West Cambridge R. R. Co.* v. *Chandler*, 13 Met. 311; *White Mountains R. R. Co.* v. *Eastman*, 34 N. H. 145; *Schenectady & Saratoga Plank Road Co.* v. *Thacher*, 1 Kernan 107; Angell & Ames on Corp., § 543; *Mann* v. *Cook*, 20 Conn. 178; *Brown* v. *Illius*, 27 Id. 84; *New York & New Haven Railroad Co.* v. *Ketchum*, Id. 170; Angell & Ames on Corp., § 542; *Danbury & Norwalk Railroad Co.* v. *Wilson*, 22 Conn. 449; *Lane* v. *Brainerd*, 30 Id. 565; *Marlborough Manufacturing Co.* v. *Smith*, 2 Id. 579; *Hepburn* v. *Griswold*, 8 Wall. 607; *Contoocook Valley Railroad* v. *Baker*, 32 N. H. 369–372; Redfield on Railways, ch. 9, § 51 (3); *Wontner* v. *Shairp*, 4 Man., Grang. & Scott 404, 441; *Pritchford* v. *Davis*, 5 Mees. & W. 2; *Howbeach Coal Co.* v. *Teague*, 5 Hurl. & Norm. 151; *McCully* v. *Pittsburgh & Connellsville Railroad Co.*, 32 Penn. St. R. 25, 31, 32; *Pittsburgh & Connellsville Railroad Co.* v. *Graham*, 36 Id. 77; *Commonwealth* v. *Cullen*, 13 Id. 133, 141–144.

2. Any change or alteration of the charter after subscription to the stock, which fundamentally varies the character, structure or purposes of the corporation, or the manner of accomplishing those purposes, is a change in the contract of subscription, which releases the subscriber from his obligation to take and pay for the stock subscribed for, notwithstanding a reservation of power to alter or amend the charter.

Hamilton Mut. Ins. Co. v. *Hobart*, 2 Gray 548; *Oldtown & Lincoln Railroad Co.* v. *Veazie*, 39 Maine 571, 581; *Commonwealth* v. *Essex Co.*, 13 Gray 253; *Allen* v. *McKeen*, 1 Sumner 276; Angell & Ames on Corp., §§ 767, 536, 537, 541; *Thompson* v. *Guion*, 5 Jones Eq. 113; *McCray* v. *Junction Railroad Co.*, 9 Ind. 358; *Marietta & Cincinnati Railroad Co.* v. *Elliott*, 10 Ohio St. R. 57, 62; *Barnes* v. *Smith*, 10 N. Y. 550; *Troy & Rutland Railroad Co.* v. *Kerr*, 17 Barb. 604; *Kenosha, Rockford & Rock Island Railroad Co.* v. *Marsh*, 17 Wis. 143; *Sage* v. *Dillard*, 15 B. Monroe 341, 348–360; *Booe* v. *Junction Railroad Co.*, 10 Ind. 93; *Zabriskie* v. *Hackensack & New York Railroad Co.*, 18 N. J. Eq. 178; *Delaware Railroad Co.* v. *Thorp*, 5

Del. 454; *Woodruff* v. *The State*, 3 Ark. 285; *Herrick* v. *Town of Randolph*, 13 Verm. 525; *Everhart* v. *West Chester & Philadelphia Railroad Co.*, 28 Penn. St. R. 339, 352, 353; *Hartford & New Haven Railroad Co.* v. *Croswell*, 5 Hill 383; *Trustees of Dartmouth College* v. *Woodward*, 4 Wheat. 518; *Sheriff* v. *Lowndes*, 16 Md. 357; *Norris* v. *Trustees of Abingdon Academy*, 7 Gill & Johns. 7; *Regents of University of Maryland* v. *Williams*, 9 Id. 366, 413; *Town of Yarmouth* v. *Town of North Yarmouth*, 34 Id. 411; *Trustees of New Gloucester School Fund* v. *Bradbury*, 11 Id. 118; *City of Louisville* v. *President & Trustees of the University of Louisville*, 15 B. Monroe 667; *Commonwealth* v. *Cullen*, 13 Penn. St. R. 133; *Brown* v. *Hummel*, 6 Id. 86; *Ellis* v. *Marshall*, 2 Mass. 277.

The opinion of the court was delivered by

CARPENTER, J.—The first ground of defence is that the whole capital of $500,000 has not been subscribed for.

There can be no doubt that the policy of the state, up to comparatively a recent period, has been, in corporations of this character, to require that an adequate cash capital for the undertaking should be furnished, before corporations should be permitted to exercise their corporate functions. Hence, in most of the charters hitherto granted, there is no authority for the stockholders to meet and choose directors before all the stock is subscribed. But in the charter before us there is a provision which seems to indicate the inauguration of a different policy. That provision is as follows: "The persons named in the first section hereof, or a majority of them, are hereby authorized to call the first meeting of the stockholders of said corporation, in such way, and at such time and place as they may appoint, whenever one hundred thousand dollars or more of the capital stock of said corporation shall have been subscribed for, to choose directors and perfect the organization of said corporation:" Private Acts, vol. 5, p. 653, § 4.

To what extent the legislature intended to change their antecedent policy, is really the question involved. The defendants contend that they only intended, after a certain amount of the capital stock should have been subscribed, to transfer the superintendence of further subscriptions to the stock from the corporators to the directors; and that it was the duty of the directors

to fill up the stock, before they could lawfully proceed with the business for which the corporation was created. The plaintiffs, on the other hand, contend that the change contemplated was much more radical—that they intended not only to authorize a meeting for the choice of directors, but that the corporation should at once possess all its powers and franchises, and might immediately proceed with the construction of its road.

The language of the charter seems to import much more than the defendants claim. The phrase, "to choose directors and perfect the organization of said corporation," in its grammatical construction, obviously relates to the meeting of the stockholders. If interpreted according to its grammatical construction, therefore, it was for that meeting to perfect the organization, as well as to choose directors. We can hardly suppose that the legislature intended that that meeting should then and there fill up the stock, much less can we suppose that they intended that the meeting should continue in session, or otherwise prolong its existence, for that purpose. We all know that such a course would have been impracticable. If the language used, therefore, is to be taken in its ordinary grammatical sense, we think it quite clear that they could not have intended, by "perfecting the organization," the filling up of the capital stock.

If the legislature intended that the directors, when chosen, should perfect the organization by procuring the balance of the stock to be subscribed for, they were certainly unfortunate in the choice of language to express that intention. If the words, "perfect the organization," relate to the directors at all, it seems reasonable to interpret them as referring to the duty of the directors to choose a president, and to make and prescribe by-laws; or to their power to choose a clerk and treasurer and other officers; for these are duties and powers usually performed and exercised by directors; and perhaps we could, without doing violence to the language used, give these words that meaning. While it is only by a forced and unnatural construction, that we can limit and apply them simply to the matter of procuring further subscriptions to the stock.

We see no difficulty however in interpreting them as referring to the stockholders' meeting. If so interpreted they may mean substantially the same thing as choosing directors, embracing such matters as are incidental to, and implied from, the power to

choose directors, such as appointing a chairman, clerk and tellers, and prescribing rules and regulations for governing their proceedings, and the like. Or they may, and more properly perhaps, refer to the appointment of such officers as are not by law required to be chosen by the directors, such as the vice-presidents, an executive committee, a clerk or secretary, a treasurer, agents, and other officers. It is true some, and perhaps all of these, may be chosen by the directors. The statute authorizes them to choose a clerk and treasurer, but it is not imperative, as in the case of the president. See Gen. Stat., p. 181, sec. 444. There is certainly some room for the inference that all these officers may be chosen by the stockholders. If so, the words under consideration may properly apply to such proceedings.

The word "organize," as used in railroad and other charters, ordinarily signifies the choice and qualification of all necessary officers for the transaction of the business of the corporation. This is usually done after all the capital stock has been subscribed for. I have been unable to find any case in which it necessarily includes in its meaning the procuring of subscriptions to the capital stock; but I do find cases where manifestly it is not used in any such sense. The corporators of the Boston, Hartford and Erie Railroad Company were authorized to *organize* the company when one-half the stock required should be subscribed: Private Acts, vol. 5, p. 543. See also act amending the charter of the Fairfield County Railroad Company, vol. 4, p. 887.

Again, if the construction contended for by the defendants is the correct one, what is gained by this unusual and extraordinary provision? Can it be claimed that the directors, after a partial organization, will be more successful in obtaining subscriptions than the corporators were before? According to their construction, the corporation cannot exist, no corporate act can be done, the object of its creation cannot be accomplished, the enterprise cannot be commenced even, until the whole stock is subscribed for. The practical operation of this section, as thus construed, would be simply to take from one set of men the burden of procuring subscriptions, and impose it upon another. Or, quite likely, it would be taking it from one set of men as corporators, and imposing it upon the same men as directors. In all this we discover nothing gained, either to the corporation or the public.

On the other hand, considering the difficulty of procuring, in the first instance, the necessary means for the construction of railroads, combined with the necessity and importance of their construction, in order that the resources of the various sections of the state may be more fully developed, we can discover a motive which may have induced the legislature to change, to some extent, their policy in this respect, and to authorize the promoters of such enterprises to commence their corporate existence, and the exercise of the powers and franchises conferred upon them, with only a part of the capital stock required subscribed for.

That this must have been the intention of the legislature, will appear more clearly from a comparison of the last clause of the 4th section with other provisions in the charter. "And whenever said corporation shall have been so organized, it may proceed to commence the construction of the railroad hereinafter specified." How organized? The defendants say, with the capital stock all subscribed for. If so, what necessity for this provision at all? The sixth section provides as follows: "Said corporation is hereby authorized and empowered to locate, construct, and finally complete, a single, double, or treble railroad or way," &c., from New Haven to Derby.

Here, then, is authority full and ample, which renders the last clause of the 4th section nugatory. Now, if, we are to construe this charter so as to give effect to all its provisions, we must reject this construction. Moreover, the language of this 4th section is peculiar. It is not that the corporation may proceed from its organization to the construction of its railroad, but it is that it may proceed to *commence* the construction. This is a strong indication that the legislature intended that the work might be commenced with a limited capital, and continued subsequently as the corporation might obtain the necessary means. We say nothing of course as to the expediency of such a policy. That was a question entirely for the legislature. Our duty is to ascertain what they intended, and to give effect to that intention.

A question may arise in respect to some of these charters, more properly perhaps in a court of equity, whether the corporation should be permitted to go forward and expend the money subscribed, when it is manifest that the work cannot be completed, and that the money expended will be lost. No such question arises in the present case. More than four-fifths of the stock

required was actually subscribed for, and the work has been carried forward nearly, or quite, to completion.

We are satisfied, therefore, that these proceedings of the corporation were not illegal, and that this branch of the defence cannot be sustained.

The defendants further claim that the Act of 1867, authorizing the city of New Haven to subscribe for two thousand shares of the stock, and the proceedings of the city and the plaintiffs under said act, operate to discharge the defendants from the obligation of their contracts.

The act authorizing said subscription provides that the mayor of said city, and one of the aldermen, to be designated by the common council, shall each be, by virtue of his office, and while said city shall continue to be a stockholder, a director in the railroad company; and that said city shall be entitled to one vote only for every four shares of stock by it owned. In every other respect the stock held by the city is held upon the same terms and conditions as that held by other stockholders.

Before discussing the legal questions involved in this part of the case, it may be well to consider briefly what effect these proceedings have, or have had, upon the rights and interests of the defendants. Are they prejudicial or otherwise? It is not found that either of the defendants has thereby sustained any actual pecuniary damage. In looking at the case as stated, we think it will be found that the whole injury consists in the fact that the defendants are deprived of the privilege of voting for two of the directors. The statute requires that there shall be not less than nine directors; there may be more at the discretion of the stockholders. The stockholders therefore elect seven out of the nine directors, and are deprived of the privilege of voting for the other two. On the other hand, the city is prohibited from voting on three-fourths of its stock. In consideration of the privilege of electing two directors, the city agrees that, in all meetings of the stockholders, it will cast but five hundred votes, instead of two thousand. The whole number of shares subscribed is 4167. The city subscribed 2000. The balance, much of it at least, is probably owned in small sums, and by individuals who take little interest in attending the meetings of the stockholders. Thus it will be readily seen that the city, if entitled to one vote on each share of its stock, could exercise a controlling influence in all the meetings

of the corporation, and would, if so disposed, elect the whole board of directors. To avoid this, the provision under consideration was adopted. The practical effect of it is to give to fifteen hundred shares, being more than one-third of the entire stock, two-ninths of the directors absolutely, at the same time depriving it of all voting power in the meetings of the stockholders. We cannot say that this is unreasonable. It is manifestly for the advantage of the corporation that its affairs should not be virtually controlled by the city. On the other hand, it is just that the city should have a voice in its management. The arrangement seems to us just and reasonable, and, on the whole, beneficial, rather than prejudicial, to the defendants.

The ground of this objection is that the defendants, by their contracts of subscription, acquired certain rights and privileges, of which they have been divested by the amendments to the charter. The contract entitled each defendant to the number of shares subscribed for by him, and obligated him to pay to the corporation the par value of the stock. It also contained an agreement, by implication at least, that the money thus received should be expended in carrying forward the business for which the corporation was created. The subscription was also upon the terms and conditions contained in the charter. We may therefore say that the contract contained an agreement, that the defendant should have all the rights and privileges conferred upon him, as a stockholder, by the charter as it then was, and until those rights were changed or modified, by his consent, or by lawful authority. One of the conditions of the charter, and also of the general law of the state under which it was granted, was that it might be altered, amended, or repealed, at the pleasure of the General Assembly. That, too, was an element in the contract, by which the defendant agreed in advance to any reasonable alteration which the legislature might lawfully make. The power thus reserved is in terms absolute; yet it is not an unlimited power. Like all other legislative powers, it is subject to this important limitation, viz., that it shall not be so exercised as to impair the obligation of a contract, or to destroy vested rights.

The acts of the corporation, in accepting the amendment to the charter, and in permitting the city to subscribe for the stock upon the terms contained in the amendment, deprived the defendants of the privilege of voting for two of the directors. The defend-

ants say that the destruction of this right absolved them from all obligation to pay for their stock. Whether it does or not is the question we are now to consider.

Some amendments, or laws, affecting corporations, are binding with or without their assent. Others bind the corporation and every member thereof, if assented to by a majority of the stockholders. And others are not binding upon non-consenting members, although assented to by the majority. All general laws, and mere matters of police regulation, are embraced in the first class. Additional powers, duties, and privileges, which do not change essentially the nature and character of the corporation, or the purpose for which it was created, and have for their object the prom tion of the enterprise originally contemplated, fall within the second class. All amendments which work a radical change in the nature and character of a corporation, or the purpose for which it was created, are within the third class.

It is not easy to establish a general rule by which it may be seen at a glance to which class any given case belongs. Each case must in a measure depend upon its own circumstances. A careful examination of the case before us, and the authorities bearing upon the question, has led us to the conclusion that it belongs to the second class, and that the amendment is binding upon every member of the corporation.

There is no change in the character of the corporation. It is a railroad company still, relating to an important public improvement. The object of its creation—the construction and operation of a railway from New Haven to Derby—remains precisely the same. There is some change in the mode of appointing the board of directors; but that change is not a radical one, nor is it, under the circumstances, an unreasonable one. So far from working an injury to the defendants, it is, as we have already seen, a benefit to them. The directors are elected by the stockholders, and every one has a voice in the election. No one has an undue advantage over the others, and the rights of all are carefully guarded. The object of the amendment was not to obstruct, hinder, or change, but to facilitate, the enterprise in which all were engaged; and, so far as we can see, it has had the designed effect. It is not an attempt on the part of the legislature to control the organization, or to place it in the power of one or more of the stockholders to elect all, or a majority of the directors; but, on the contrary, the

design was to prevent that result. The manner of voting, and the mode of electing officers, are usually provided for in the charter. The legislature may, in the first instance, certainly, impose such terms and restrictions as may be thought best. The powers reserved will authorize subsequent legislation upon the same subject, so long as the owners of the stock retain the control of the corporation, and are all placed upon equal and fair terms.

The rights, therefore, of which these defendants have been deprived, are rights which they held subject to such reasonable changes and regulations as the legislature might make, with the assent of the corporation; and they are not thereby absolved from their obligation to pay for their stock.

The decided cases on this subject will abundantly sustain our position. A few only of the many cases cited will be referred to. And first two or three of the strongest cases relied upon by the defendants.

The Hartford & New Haven Railroad Co. v. *Croswell*, 5 Hill 383. That was an action against a subscriber to recover certain instalments upon his stock. After the instalments became due, the charter was altered, by authorizing the company, in addition to the powers originally granted, to purchase certain steamboats, to be used in connection with its road, not exceeding in amount the sum of $200,000. It was held that neither the board of directors, nor a majority of the stockholders, could sanction the alteration, so as to bind the defendant, without his consent. In that case there was a diversion of the funds from the purpose originally contemplated. Here there is no such diversion. But even the authority of that case is considerably shaken by later cases cited below.

The Troy & Rutland Railroad Co. v. *Kerr*, 17 Barb. 581. The company was incorporated with a capital of $1,500,000. After the defendant subscribed to the stock, the articles of association were amended under a general law, by which the capital was reduced to $325,000, and the contemplated road was materially shortened. The defendant refused payment of calls upon his stock, and, in an action brought to recover them, it was held that the plaintiffs were entitled to recover. There were other questions in the case. The presiding judge, who gave the opinion of the court, doubted upon this point, but seems to have acquiesced in the decision, partly upon the ground that there was evidence tend-

ing to show that the defendant assented to the change. But a majority of the court were of the opinion that there was no such radical change of the plan and business of the corporation as exonerated the defendant. The presiding judge, in the course of his opinion, says, "Admitting that an alteration may discharge the obligation, was not this one incidental to the undertaking, and to which the stockholder must be considered impliedly to assent? and if not, was it so material as to be a ground of defence? That case is in reality an authority against the defendants. The court seems to have gone further than we are required to go in the present case, as the alteration in that case was much more radical than in this.

Sage v. *Dillard*, 15 B. Monroe 340. The corporation in that case was established purely for charitable purposes, and depended for its funds mainly upon voluntary contributions. The legislature from time to time authorized an increase in the number of corporators, and finally increased them arbitrarily by appointing sixteen new corporators by name. The corporation refused to accept the amendment. The court held that the act of the legislature was inoperative. That case differs from this in two important particulars. First, in that case the amendment was rejected by the corporation; in this it was accepted. Secondly, that was an attempt by the legislature to have a voice in the management of funds contributed for charitable purposes against the will of the persons to whom their management had been intrusted by the donors, and presumptively, perhaps, against the will of the donors themselves. They had vested in the old corporators the control of these funds. The action of the legislature was a manifest infringement of that right. Nothing of that kind appears in this case.

We have no occasion at this time to enter upon the discussion of the difference between an eleemosynary corporation and a corporation for the prosecution of an enterprise involving public interests. It certainly seems reasonable that the power of the legislature to legislate in respect to the latter, should be more extensive than in respect to the former. The case of *Efooks* v. *The London and South-western Railway Co.*, 19 Eng. Law and Eq. 7, maintains this proposition: The rule that the majority cannot bind the minority in a joint-stock company, as to acts not contemplated by the common contract, has not been applied to corporate companies for a public undertaking, involving public

interests and duties, under the sanction of Parliament. Whether we should go so far if the question was directly before us, we need not now say. We quote the case as showing that we are not going beyond the limits of the law elsewhere.

In the case of *The Buffalo & New York City Railroad Co.* v. *Dudley*, 14 N. Y. 336, it was expressly held, that "an alteration by the legislature of the company's charter, in pursuance of powers reserved, by changing its name, increasing its capital and extending its road, does not discharge the defendant from liability on his subscription; and this, whether such alteration is beneficial to the defendant or not, the alteration having been duly made, and without any fraud on the part of the company. See also *Schenectady & Saratoga Plank Road Co.* v. *Thatcher*, 11 N. Y. 102.

In this opinion the other judges concurred; except SEYMOUR, J., who, having been counsel in a case involving the same question, did not sit.

There are two questions raised in the foregoing case, both of which are fundamental to the very existence of corporate action: 1. That the requisite number of shares be subscribed to enable the corporation to go into operation, as such; which in the absence of special provision of the charter must embrace the whole capital stock of the company, when that is limited; 2. In order to bind subscribers to the capital stock, or even dissentients to the alteration, who have paid their subscriptions; there must have been no fundamental alteration in the charter after the subscriptions.

The first of these questions becomes, in the present case, one of construction merely. There is no attempt on the part of counsel even, to escape from the rule, as just stated; that all the capital stock, in ordinary cases, must be subscribed by *bonâ fide* shareholders, before the company can be organized even; much more before it can enter upon its corporate business. And when the charter of the corporation specially provides that, upon a certain amount of the capital stock being subscribed, the company may organize, or even begin its corporate action, there can be no longer any question the provision is legitimate and binding. In the present case the court find no difficulty in holding; and we do not well see how any one need question the propriety of the decision, that by the terms of the charter the company was fully justified in going into operation in the manner it did. The authorities are very fully cited by court and counsel, upon this point, and need not be repeated here.

In regard to the second point, the only difficulty which ever arises is, to determine precisely what shall be regarded as a fundamental alteration of the charter. It seems to be entirely well settled by repeated decisions of the national Supreme Court, which is the final arbiter in such questions, that as a corporate charter is to be regarded as a contract, within the provision of the United States Constitution prohibiting the states from "passing any law impairing the obligation of contracts," it is not competent for any state legislature to make any essential or fundamental alteration in

the charter of a corporation, without its consent—and here consent implies more than that of the majority—it must embrace the minority as well: *Boston and Lowell Railway* v. *Salem, &c., Railway*, 2 Gray 1; s. c. 2 Redf. Am. Railw. Cases 577; *Thorpe* v. *Rut. and Bur. Railway*, 27 Vt. 140; s. c. 2 Redf. Am. Railw. Cases 587; *The Richmond, F. and P. Railway* v. *The Louisa Railway*, 13 How. U. S. 71; s. c. 2 Redf. Am. Railw. Cases 600; *Pontchartrain Railway* v. *New Orleans, &c., Railway*, 11 La. Ann. 253; *Turnpike Co.* v. *The State of Maryland*, 3 Wall. U. S. 210, and numerous other cases.

But that does not seem to be precisely the form in which the question is presented here, although the same in substance and principle. The great majority of the corporation here accept the modification of the charter offered, whatever that may be, and are attempting to enforce it upon the dissenting minority. The question then seems to present itself in this form: How far the state legislature may modify the charter of an existing corporation on the petition of the majority of the shareholders, so as to make the alteration binding upon the dissenting minority?

This seems to us, as we have before intimated, in substance the same question first stated, How far the power exists in state legislatures to modify the corporate life or action of existing corporations? For, unless the state legislature have the power to do the act, independent of the consent of the corporators, it could not make it binding upon the dissentient members, and so the alteration or attempted alteration would not become a part of the organic life of the corporation.

The alteration then, in the purposes and objects, or in the mode of operation, of existing corporations, to be binding upon all its members, must be such as the majority could carry into effect, without infringing the true purpose, spirit and intent of the organization. In other words it could not extend beyond such modifications of the purposes, or mode of action, of the corporation as would fall within the scope of the general powers and functions created by the original charter. The question may be well enough tested by the general scope of legislation over existing corporations. That extends to everything affecting the police power of the state. Such as requiring railways to erect sign-boards at road crossings; having the prescribed force of brakes on each train; putting intruders off their trains only at the stations, and innumerable other things of a similar character, too numerous and too well established to require argument or authority in their support. The subject is a good deal discussed, and the cases cited in *Thorpe* v. *Rut. and Bur. Railway*, *supra*, 2 Redf. Railw. § 232, and cases cited.

And the modification of the charter of the corporation in the present case seems to be rather of this character, if indeed it really amount to this even. It consists mainly in conferring power upon a municipal corporation to become a subscriber to the stock of the corporation. This might just as well have been done by general legislation extending to all the municipalities of the state, and allowing such municipalities to appoint a proportionate number of the directors. This latter provision is indeed the only one which bears any semblance of effecting any modification of the corporate action. If this had extended to a majority of the board of directors, it would have borne somewhat the appearance of overslaughing the agency of the other shareholders. And it may be argued, possibly, that the principle is much the same when it only extends to a minority, but surely the wrong and injustice is not the same. And in questions of this character, courts have to

look to the spirit and effect of legislative infringements or alleged infringements of vested rights. There is nothing objectionable in this mode of representation of the municipal subscription in the board of directors, unless it consists in allowing these shares to vote as a class and not in the mass of the other shares. It is not uncommon for corporate shares to be classified, to some extent in voting. We cannot perceive any objection to allowing any subscriber, having a certain number of shares, becoming himself a director, or even naming one of the directors. But most unquestionably this class representation must be restricted so as not to have the control of the corporation. It is upon that ground that those having a large number of shares are allowed a less number of votes in proportion. As questions of policy they are, no doubt, of great importance, but as questions of legislative authority and power, it does not occur to us that there can be much doubt.

It is most unquestionable that the recent English cases give parliament, on the petition of a majority of the shareholders in railway and other *quasi* public corporations, a far more extended power to superadd new schemes to the original project than has yet been done in this country, and even to carry out such new schemes by means of the existing resources of the corporation. We have always, in this country, required that if a new scheme was superadded to the original purpose of a corporation, it should be carried into effect by new subscriptions for that particular purpose. And such is the scope of the earlier English cases: *Munt* v. *Shrewsbury and Chester Railway*, 13 Beav. 1; *Colman* v. *Eastern Counties Railway*, 10 Id. 1. But in *Taylor* v. *C. and M. Railway*, Law Rep. 4 Ho. Lds. 628, this distinction seems to be disregarded.

I. F. R.

Court of Appeals of New York.

THE PEOPLE EX REL. THE ATTORNEY-GENERAL *v.* CURTIS.

MATTER OF CARL VOGT.

The power to regulate, provide for and control the surrender of fugitives from justice from foreign countries is by the Federal Constitution conferred exclusively on the Federal Government, and cannot be exercised by the states.

A state law giving the Governor power to surrender a criminal to a foreign country is contrary to the provisions of the United States Constitution.

CARL VOGT was, on April 4th 1872, committed to the city prison by one of the police justices of the city of New York, on a charge of bringing stolen goods into the state. The Belgian minister, charging that Vogt had committed murder, arson and robbery in Belgium, made application to the Governor to have Vogt sent to Belgium under a statute of the state passed in 1822, which reads as follows:—

"Sec. 8. The governor may, in his discretion, deliver over to